

IN THE COURT OF SPECIAL JUDGE(POCSO) ::NALBARI

Present : Farhana Sultana
Special Judge, Nalbari.

Date of Judgment : 07-09-2022

SPL. (P) CASE NO. : 38/2021

U/S Sec. 363/376 Indian Penal Code read with section 4 of Protection of Children from Sexual Offences Act, 2012.

Complainant : State of Assam

Represented by : Sri K.K Sarma, Ld. Special Public
Prosecutor

Accused : Sirajul Ali

S/O- Ashir Ali
Mukalmua Dangarsupa
PS- Mukalmua
Dist-Nalbari, Assam.

Represented by : NK Dutta, Advocate.

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|----|--------------------------------------|---|------------|
| 1. | Date of offence | : | 23-07-2021 |
| 2. | Date of FIR | : | 22-07-2021 |
| 3. | Date of Charge Sheet | : | 31-10-2021 |
| 4. | Date of Framing of Charge | : | 16-08-2022 |
| 5. | Date of Commencement of Evidence: | : | 07-09-2022 |
| 6. | Date on which judgment reserved : | : | Nil |
| 7. | Date of Judgment | : | 07-09-2022 |
| 8. | Date of the Sentencing Order, if any | : | --- |

Accused Details :

Rank of accused	1
Name of Accused	Sirajul Ali
Date of Arrest	27/10/2021
Date of Release on Bail	06/12/2021
Offences charged with	363/376 IPC r/w Sec 4 of POCSO Act
Whether Acquitted	Acquitted
Sentence Imposed	Nil
Period of detention undergone during trial for purpose of Sec 428 CrPC	39 days

J U D G M E N T

1. On 24/07/2021 one Sajia Bibi lodged an ejahar before the O/C, Mukalmua PS stating inter alia that on the previous day i.e. on 23-7-2021 at about 7 pm in absence of her in the house accused Sirajul Ali with the help of Asir Ali and Sahida Bibi kidnapped her daughter Miss Jesmina Begum (hereinafter referred as Victim 'X'). Hence, this case.

2. On receipt of the FIR, O/C, Mukalmua PS registered it as Mukalmua PS Case No. 382/2021 u/s 366 Indian Penal Code (hereinafter referred to as IPC). The police

went to the place of occurrence and examined the available witnesses & their statements were recorded. Victim's statement u/s 164 Criminal Procedure Code (hereinafter referred to as CrPC) was duly recorded. On completion of the investigation, a prima facie case having appeared against accused Sirajul Ali, the Investigating Officer (herein after referred to as I/O) submitted charge sheet against him u/s 366 IPC R/W 4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as POCSO Act.

3. Cognizance of offence was taken u/s 366 IPC R/W Sec. 4 of POCSO Act, 2012 and summon was issued to the accused. On receiving summon, the accused Sirajul Ali appeared before the court to face trial. Necessary copies were furnished to him. After considering the materials available on case record and case diary, a prima facie case having appeared u/s 363/376 IPC R/W Sec. 4 of POCSO Act, 2012, charge was framed u/s 366(A)/376 R/W Sec. 4 of POCSO Act and the content of the charges were read over and explained to him to which he pleaded not guilty and claimed to be tried.

4. To prove the offence u/s 363/376 IPC R/W Sec. 4 of POCSO Act, 2012, against the accused person, the prosecution side examined 2 witnesses & exhibited 2 documents including one material exhibit. Examination of the accused U/S 313 of Cr.P.C, was dispensed with as not implicated. The accused person's case was that of total denial.

5. The **points for determination** are -

i) Whether the accused on 23/07/2021 at around 7 pm at Mukalmua kidnapped the victim from lawful guardianship and **thus committing offence u/s 363 IPC ?**

ii) Whether the accused on the same day at Nalbari raped the victim **thus committing offence u/s 376 IPC ?**

iii) Whether the accused on the same day at Nalbari committed penetrative sexual assault upon the victim, who was under the age of 18 years **thus committing offence u/s 4 of POCSO Act ?**

Arguments forwarded by Both Sides –

6. Learned Special Public Prosecutor argued that the evidences of the witnesses are clear that the accused did in fact sexually assaulted the victim. He prayed that maximum punishment should be given.

7. On the other hand learned defence counsel has submitted that prosecution has failed to prove the case. There are discrepancies in the evidence of both the PWs adduced before the court and the statements of the witnesses recorded u/s 161 and 164 of CrPC. Learned defence counsel has further submitted that the victim has nullified the

prosecution case and from the evidence of the victim, no ingredients of offence is made out against the accused. He also, argued that the accused never sexually assaulted or harassed her. So, Court should consider that aspect and accordingly pronounce judgment.

DISCUSSION, DECISION AND REASONS THEREOF

8. I heard the arguments forwarded by the Ld. Special Public Prosecutor and the Id. counsel for the accused. I have also gone through the materials available in the Case Record & the Case Diary. The charge u/s 363/376 IPC R/W Sec. 4 of POCSO Act, 2012 are analyzed herein below in view of the materials available on record and the argument forwarded by both sides.

9. It is at this stage expedient to cast a glance at the evidences of the prosecution witnesses.

10. **PW 1**, the Informant Sajja Bibi has stated that victim is her daughter and she knew the accused person. The incident took place one year ago. On the relevant day her daughter went missing from home. She was at home at that time but did not know what happened. Later on when she did not find her daughter, she started searching for her. Despite her search she could not find her daughter. So, she lodged the ejahar next day. 3 days lodging of the lodging of the ejahar police recovered her daughter. She was called to police

station and when she went there and she found her daughter. She has categorically stated that since she has already found her daughter, she does not want to proceed with the case further and does not have any objection if the accused is acquitted from this case.

11. **PW 2**, the victim deposed that informant is her mother. Accused Sirajul is her boyfriend. On the day of occurrence, she went with Sirajul to another friend's house. She does not know the name of the village where they went. As she did not inform anybody at home, her mother suspected that she might have been kidnapped and so lodged the ejahar. PW 2 also deposed that the accused did not kidnap her or did not induced or forced her to go with him. She went with him willingly, only for a pleasure trip. At present she was at her home with her mother. After lodging of the ejahar police sent her for medical examination and also got her statement recorded by Magistrate. She did not have any objection, if the accused is acquitted from this case.

12. From the evidence of both the Informant and the victim it appears that, there is no ingredients of any of the sections with which the accused is charged. Though in the ejahar, the Informant has labeled a number of allegations against the accused person, but, in her evidence and also in

the evidence of the victim, no such statements are made which would prove those allegations against him. The most important aspect of a case under the POCSO Act is that the victim should be a minor and that Prosecution must adduce conclusive evidence to prove the age of the victim. In this case Prosecution failed to establish through proper documentary evidence that the victim was a minor. Prosecution has failed to bring on record any evidence which will bring home, the charges labeled against the accused, Sirajul Ali. So, it can be safely held that Prosecution has failed to prove the charge against the accused Sirajul Ali u/s 363 /376 IPC R/W Sec. 4 of POCSO Act, 2012.

13. It is pertinent to mention here that, though the POCSO Act provides the adverse presumptions against the accused under sections 29 and 30, to take resort to these adverse presumptions, the basic foundations for prosecution of the accused in the case has to be established. In this case it is clearly seen that the Prosecution has failed to establish the foundational facts against the accused to draw the presumptions provided under section 29 and 30 of the POCSO Act.

14. Accordingly the accused is proved to be not guilty u/s 363/376 IPC R/W Sec. 4 of POCSO Act, 2012.

O R D E R

15. From the discussion made above, it is seen that

the prosecution has miserably failed to prove the offence u/s 363/376 IPC R/W Sec. 4 of POCSO Act, 2012 against the accused. Hence, **accused Sirajul Ali is found not guilty and is acquitted from the charge of offence u/s 363 /376 IPC R/W Sec. 4 of POCSO Act, 2012.**

16. The accused person is set free at his liberty forthwith.

17. Bail bond furnished by the accused shall stand canceled after period of 6 months.

18. The seized articles, if any be disposed of according to law.

Given under my hand and seal of this court on this the 7th day of September /2022.

(Farhana Sultana)

Special Judge
Nalbari

Dictated & corrected by me

Special Judge
Nalbari

APPENDIX
LIST OF PROSECUTION/ DEFENCE/ COURT
WITNESSES

(A) Prosecution:

<u>Sl Rank</u>	<u>Name</u>	<u>Nature of Evidence</u>
i)	PW 1 : Sajia Bibi	Informant
ii)	PW 2 : Jesmina Begum	Victim
(B)	<u>Defence</u>	None
(C)	<u>Court</u>	None

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

(A) Prosecution Exhibits :

<u>Sl.</u>	<u>Exhibit No</u>	<u>Description</u>
i)	Ext P 1/PW 1	: Ejahar,
ii)	Ext P 1(1)/PW 1	: Signature of PW 1,
iii)	Ext P 2 /PW 2	: Statement recorded u/s 164 CrPC
iv)	Ext P2(1) to P2(2)	Signatures of PW 2

(B) **Defence Exhibits** : None.

(C) **Court Exhibits** : None.

(D) **Material Exhibits** :

(Farhana Sultana)
Special Judge
Nalbari

